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Prevent Unfair Manipulation of Prices Act of 2008 (Introduced in House)

HR 6330 IH

110th CONGRESS

2d Session

H. R. 6330

To provide for regulation of certain transactions involving energy commodities, to strengthen the enforcement authorities of the Federal Energy Regulatory Commission under the Natural Gas Act and the Federal Power Act , and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

June 20, 2008



Mr. STUPAK (for himself, Mr. LARSON of Connecticut, Mr. MCHUGH, Mr. ALLEN, Mr. UDALL of Colorado, Mr. CARNEY, Mr. KILDEE, Ms. SUTTON, Mr. HINCHEY, Mr. COURTNEY, Mr. DONNELLY, Mr. ALTMIRE, Mr. FATTAH, Ms. SCHWARTZ, Mr. DEFAZIO, Mr. VISCLOSKY, Mr. WELCH of Vermont, Mrs. DAVIS of California, Mr. BISHOP of New York, Ms. SCHAKOWSKY, Ms. SLAUGHTER, Mr. INSLEE, Mrs. CAPPS, Mr. BAIRD, Mr. THOMPSON of California, Ms. HIRONO, Mr. WILSON of Ohio, Mr. MCGOVERN, Mr. CHANDLER, Mrs. MCCARTHY of New York, Mr. MICHAUD, Mr. HILL, Mr. PATRICK J. MURPHY of Pennsylvania, Ms. RICHARDSON, Mr. HODES, Mr. BLUMENAUER, Mr. GRIJALVA, Mr. PASCRELL, Mr. ROSS, Ms. SOLIS, Mr. DOYLE, Ms. BALDWIN, Mr. CONYERS, Mr. DELAHUNT, Mr. PASTOR, and Mr. CAPUANO) introduced the following bill; which was referred to the Committee on Agriculture, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide for regulation of certain transactions involving energy commodities, to strengthen the enforcement authorities of the Federal Energy Regulatory Commission under the Natural Gas Act and the Federal Power Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'PreventUnfairManipulationofPricesActof2008'.

SEC. 2. REGULATION OF CERTAIN TRANSACTIONS IN DERIVATIVES INVOLVING ENERGY COMMODITIES.

(a) Energy Commodity Defined- Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) is amended--

(1) in paragraph (14), by inserting `, an energy commodity,' after `excluded commodity';

(2) by redesignating paragraphs (13) through (21) and paragraphs (22) through (34) as paragraphs (14) through (22) and paragraphs (24) through (36), respectively;

(3) by inserting after paragraph (12) the following:

` (13) ENERGY COMMODITY- The term `energy commodity' means--

` (A) coal;

` (B) crude oil, gasoline, diesel fuel, jet fuel, heating oil, and propane;

` (C) electricity;

` (D) natural gas; and

` (E) any other substance (other than an excluded commodity, a metal, or an agricultural commodity) that is used as a source of energy, as the Commission, in its discretion, deems appropriate.'; and

(4) by inserting after paragraph (22) (as so redesignated by paragraph (2) of this subsection) the following:

` (23) INCLUDED ENERGY TRANSACTION; BILATERAL ENERGY TRANSACTION- The term `included energy transaction' means a contract, agreement, or transaction in an energy commodity for future delivery that provides for a delivery point of the energy commodity in the United States, or that is transacted on a computer terminal located in the United States. The term `bilateral included energy transaction' means an included energy transaction that is executed or traded other than on or through a trading facility.'.

(b) Extension of Regulatory Authority to Swaps Involving Included Energy Transactions- Section 2(g) of such Act (7 U.S.C. 2(g)) is amended--

(1) by inserting `or an energy commodity' after `agricultural commodity'; and

(2) by inserting `not an included energy transaction and is' before `--'.

(c) Exemption for Transactions in Energy Commodities That Are Not Included Energy Transactions- Section 2 of such Act (7 U.S.C. 2) is amended by adding at the end the following:

`(j) Exemption for Transactions in Energy Commodities Which Are Not Included Energy Transactions- This Act shall not apply to a contract, agreement, or transaction in an energy commodity which is not an included energy transaction.'.

(d) Extension of Regulatory Authority to Included Energy Transactions on Foreign Boards of Trade- Section 4 of such Act (7 U.S.C. 6) is amended--

(1) in subsection (a), by inserting `, and which is not an included energy transaction' after `territories or possessions' the 2nd place it appears; and

(2) in subsection (b), by adding at the end the following: `The preceding sentence shall not apply with respect to included energy transactions.'.

(e) Limitation of CFTC Authority To Provide Certain Exemptions With Respect to Included Energy Transactions-

(1) IN GENERAL- Section 4(c) of such Act (7 U.S.C. 6(c)) is amended by adding at the end the following:

`(6) The Commission may not exempt any included energy transaction from the requirements of subsection (a), unless the Commission provides 60 days advance notice to the Congress and solicits public comment about the provision of the exemption.'.

(2) NULLIFICATION OF NO-ACTION LETTER EXEMPTIONS TO CERTAIN REQUIREMENTS APPLICABLE TO INCLUDED ENERGY TRANSACTIONS- Beginning 180 days after the date of the enactment of this Act, any exemption provided by the Commodity Futures Trading Commission that has allowed included energy transactions (as defined in section 1a(13) of the Commodity Exchange Act) to be conducted without regard to the requirements of section 4(a) of such Act shall be null and void.

(f) Requirement To Establish Uniform Position Limits for Included Energy Transactions- Section 4a(a) of such Act (7 U.S.C. 6a(a)) is amended--

(1) by inserting after the 2nd sentence the following: `With respect to included energy transactions, the Commission shall fix limits on the aggregate number of positions which may be held by any person for the prompt month, and the aggregate number of positions which may be held by any person for each month, and the aggregate number of positions which may be held by any person for all months, in all markets subject to the jurisdiction of the Commission.'; and

(2) in the 4th sentence by inserting `, consistent with the 3rd sentence,' after `Commission'.

(g) Swaps Involving Included Energy Transactions Excluded From Exemption for Bona Fide Hedging Transactions- Section 4a(c) of such Act (7 U.S.C. 6a(c)) is amended by adding at the end the following: `The preceding provisions of this subsection shall not apply to swaps that involve an included energy transaction.'.

(h) Special Rules Applicable to Bilateral Included Energy Transactions-

(1) EXEMPTION FROM REQUIREMENT THAT TRANSACTIONS BE MADE ON OR THROUGH A DESIGNATED CONTRACT MARKET, ETC- Section 4(a) of such Act (7 U.S.C. 6(a)), as amended by subsection (d)(1) of this section, is amended by inserting ` (other than a bilateral included energy transaction)' after

` any transaction'.

(2) REPORTING AND RECORDKEEPING REQUIREMENTS-

(A) IN GENERAL- Section 4g of such Act (7 U.S.C. 6g) is amended by adding at the end the following:

` (g) Requirements Applicable to Bilateral Included Energy Transactions-

` (1) IN GENERAL- An eligible contract participant that enters into or executes a bilateral included energy transaction shall--

` (A) provide to the Commission on a timely basis the information required under paragraph (2);

` (B) consistent with section 4i, maintain books and records relating to the transaction for at least 5 years after the date of the transaction, in such form as the Commission shall require; and

` (C) keep the books and records open to inspection by any representative of the Commission or the United States Department of Justice.

` (2) REQUIRED INFORMATION-

` (A) IN GENERAL- The Commission shall require eligible contract participants to provide the Commission with such information regarding bilateral included energy transactions entered into or executed by the participants as the Commission considers necessary to assist in detecting and preventing price manipulation.

` (B) INFORMATION TO BE PROVIDED- The information to be provided shall include information regarding large trading positions (as defined by the Commission) obtained through 1 or more bilateral included energy transactions that involve--

` (i) substantial quantities of the underlying energy commodity in the cash market; or

` (ii) substantial positions, investments, or trades in agreements or contracts related to energy commodities.'.

(B) REGULATIONS- Not later than 180 days after the date of the enactment of this Act, the Commodity Futures Trading Commission shall issue a notice of proposed rulemaking, and not later than 1 year after such date of enactment, the Commission shall promulgate final regulations, specifying the information to be maintained and provided under section 4g(g)(2) of the Commodity Exchange Act.

(i) Public Disclosure of Number and Value of Positions Held in Commodity Index Funds- Section 8 of such Act (7 U.S.C. 12) is amended by adding at the end the following:

` (j) The Commission shall publish on its website monthly the aggregate number and value of the long positions, and the aggregate number and value of the short positions, that are held by any person in any portfolio constructed to match or track the components of an index of all commodities, and the portion of the positions that are net long positions in included energy transactions.'.

(j) No Effect on FERC Authority- Section 2 of such Act (7 U.S.C. 2), as amended by subsection (c) of this section, is amended by adding at the end the following: .

` (k) No Effect on FERC Authority- This Act shall not be interpreted to affect the jurisdiction of the Federal Energy Regulatory Commission with respect to the authority of the Federal Energy Regulatory Commission

under the Federal Power Act (16 U.S.C. 791a et seq.), the Natural Gas Act (15 U.S.C. 717 et seq.), or other law to obtain information or otherwise carry out the responsibilities of the Federal Energy Regulatory Commission.'.

SEC. 3. CEASE-AND-DESIST AUTHORITY.

(a) Natural Gas Act- Section 20 of the Natural Gas Act (15 U.S.C. 717s) is amended by adding the following at the end:

` (e) Cease-and-Desist Proceedings; Temporary Orders; Authority of the Commission- If the Commission finds, after notice and opportunity for hearing, that any entity may be violating, may have violated, or may be about to violate any provision of this Act, or any rule, regulation, restriction, condition, or order made or imposed by the Commission under the authority of this Act, the Commission may publish its findings and issue an order requiring such entity, and any other entity that is, was, or would be a cause of the violation, due to an act or omission the entity knew or should have known would contribute to such violation, to cease and desist from committing or causing such violation and any future violation of the same provision, rule, or regulation. Such order may, in addition to requiring an entity to cease and desist from committing or causing a violation, require such entity to comply, to provide an accounting and disgorgement, or to take steps to effect compliance, with such provision, rule, or regulation, upon such terms and conditions and within such time as the Commission may specify in such order. Any such order may, as the Commission deems appropriate, require future compliance or steps to effect future compliance, either permanently or for such period of time as the Commission may specify.

` (f) Hearing- The notice instituting proceedings pursuant to subsection (e) shall fix a hearing date not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is set by the Commission with the consent of any respondent so served.

` (g) Temporary Order- Whenever the Commission determines that the alleged violation or threatened violation specified in the notice instituting proceedings pursuant to subsection (e), or the continuation thereof, is likely to result in significant dissipation or conversion of assets, significant harm to energy consumers, or substantial harm to the public interest, prior to the completion of the proceedings referred to in subsection (e). The Commission may issue a temporary order requiring the respondent to cease and desist from the violation or threatened violation and to take such action to prevent the violation or threatened violation and to prevent dissipation or conversion of assets, significant harm to energy consumers, or substantial harm to the public interest, frustration of the Commission's ability to conduct the proceedings, or frustration of the Commission's ability to redress said violation at the conclusion of the proceedings, as the Commission deems appropriate pending completion of such proceedings. Such an order shall be entered only after notice and opportunity for a hearing, unless the Commission determines that notice and hearing prior to entry would be impracticable or contrary to the public interest. A temporary order shall become effective upon service upon the respondent and, unless set aside, limited, or suspended by the Commission or a court of competent jurisdiction, shall remain effective and enforceable pending the completion of the proceedings.

` (h) Review of Temporary Orders-

` (1) COMMISSION REVIEW- At any time after the respondent has been served with a temporary cease-and-desist order pursuant to subsection (g), the respondent may apply to the Commission to have the order set aside, limited, or suspended. If the respondent has been served with a temporary cease-and-desist order entered without a prior Commission hearing, the respondent may, within 10 days after the date on which the order was served, request a hearing on such application and the Commission shall hold a hearing and render a decision on such application at the earliest possible time.

` (2) JUDICIAL REVIEW- Within--

` (A) 10 days after the date the respondent was served with a temporary cease-and-desist order entered with

a prior Commission hearing; or

` (B) 10 days after the Commission renders a decision on an application and hearing under paragraph (1), with respect to any temporary cease-and-desist order entered without a prior Commission hearing, the respondent may apply to the United States district court for the district in which the respondent resides or has its principal place of business, or for the District of Columbia, for an order setting aside, limiting, or suspending the effectiveness or enforcement of the order, and the court shall have jurisdiction to enter such an order. A respondent served with a temporary cease-and-desist order entered without a prior Commission hearing may not apply to the court except after hearing and decision by the Commission on the respondent's application under paragraph (1) of this subsection.

` (3) NO AUTOMATIC STAY OF TEMPORARY ORDER- The commencement of proceedings under paragraph (2) of this subsection shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

` (4) EXCLUSIVE REVIEW- Sections 19(d) and 24 shall not apply to a temporary order entered pursuant to this section.

` (i) Implementation- The Commission is authorized to adopt rules, regulations, and orders as it deems appropriate to implement this subsection.'.

(b) Federal Power Act- Section 314 of the Federal Power Act (16 U.S.C. 825m) is amended by adding the following at the end:

` (e) Cease-and-Desist Proceedings; Temporary Orders; Authority of the Commission- If the Commission finds, after notice and opportunity for hearing, that any entity may be violating, may have violated, or may be about to violate any provision of this Act, or any rule, regulation, restriction, condition, or order made or imposed by the Commission under the authority of this Act, the Commission may publish its findings and issue an order requiring such entity, and any other entity that is, was, or would be a cause of the violation, due to an act or omission the entity knew or should have known would contribute to such violation, to cease and desist from committing or causing such violation and any future violation of the same provision, rule, or regulation. Such order may, in addition to requiring an entity to cease and desist from committing or causing a violation, require such entity to comply, to provide an accounting and disgorgement, or to take steps to effect compliance, with such provision, rule, or regulation, upon such terms and conditions and within such time as the Commission may specify in such order. Any such order may, as the Commission deems appropriate, require future compliance or steps to effect future compliance, either permanently or for such period of time as the Commission may specify.

` (f) Hearing- The notice instituting proceedings pursuant to subsection (e) shall fix a hearing date not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is set by the Commission with the consent of any respondent so served.

` (g) Temporary Order- Whenever the Commission determines that the alleged violation or threatened violation specified in the notice instituting proceedings pursuant to subsection (e), or the continuation thereof, is likely to result in significant dissipation or conversion of assets, significant harm to energy consumers, or substantial harm to the public interest, prior to the completion of the proceedings referred to in subsection (e), the Commission may issue a temporary order requiring the respondent to cease and desist from the violation or threatened violation and to take such action to prevent the violation or threatened violation and to prevent dissipation or conversion of assets, significant harm to energy consumers, or substantial harm to the public interest, frustration of the Commission's ability to conduct the proceedings, or frustration of the Commission's ability to redress said violation at the conclusion of the proceedings, as the Commission deems appropriate pending completion of such proceedings. Such an order shall be entered only after notice and opportunity for a hearing, unless the Commission determines that notice and hearing prior to entry would be impracticable or contrary to the public interest. A temporary order shall become effective upon service upon the respondent and, unless set aside, limited, or suspended

by the Commission or a court of competent jurisdiction, shall remain effective and enforceable pending the completion of the proceedings.

“(h) Review of Temporary Orders-

“(1) COMMISSION REVIEW- At any time after the respondent has been served with a temporary cease-and-desist order pursuant to subsection (g), the respondent may apply to the Commission to have the order set aside, limited, or suspended. If the respondent has been served with a temporary cease-and-desist order entered without a prior Commission hearing, the respondent may, within 10 days after the date on which the order was served, request a hearing on such application and the Commission shall hold a hearing and render a decision on such application at the earliest possible time.

“(2) JUDICIAL REVIEW- Within--

“(A) 10 days after the date the respondent was served with a temporary cease-and-desist order entered with a prior Commission hearing; or

“(B) 10 days after the Commission renders a decision on an application and hearing under paragraph (1), with respect to any temporary cease-and-desist order entered without a prior Commission hearing, the respondent may apply to the United States district court for the district in which the respondent resides or has its principal place of business, or for the District of Columbia, for an order setting aside, limiting, or suspending the effectiveness or enforcement of the order, and the court shall have jurisdiction to enter such an order. A respondent served with a temporary cease-and-desist order entered without a prior Commission hearing may not apply to the court except after hearing and decision by the Commission on the respondent's application under paragraph (1) of this subsection.

“(3) NO AUTOMATIC STAY OF TEMPORARY ORDER- The commencement of proceedings under paragraph (2) of this subsection shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

“(4) EXCLUSIVE REVIEW- Section 317 shall not apply to a temporary order entered pursuant to this section.

“(i) Implementation- The Commission is authorized to adopt rules, regulations, and orders as it deems appropriate to implement this subsection.”.

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